

June 23, 2017

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**RE: *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard,*
GN Docket No. 16-142**

Dear Ms. Dortch:

On Wednesday, June 21, 2017, Derrick Owens, Gerry Duffy and the undersigned representing WTA – Advocates for Rural Broadband (“WTA”), Dave Osborn and Marilyn Osborn of VTX1 Companies, Brenda Shepard of Volcano Communications, and Mark Feest of CC Communications¹ met separately with (1) David Grossman, Chief of Staff to Commissioner Mignon Clyburn, (2) Alison Nemeth, Media Advisor to Chairman Ajit Pai, and (3) Martha Heller, Steven Broeckaert, Brendan Murray, Evan Baranoff, Kathy Berthot, F. Mario Trujillo, Gabrielle Rejouis, Mason Shefa, and Nicole Desbois of the Media Bureau, to discuss WTA members’ experience obtaining retransmission consent and the impacts a transition to the ATSC 3.0 Next Generation broadcast standard will have on the operations and continued viability of small rural multichannel video programming distributors (“MVPDs”).

Mr. Osborn described the launch of VTX1’s IP-based MVPD service based out of Raymondville, Texas beginning in 2006 and 2007. Mr. Osborn explained that VTX1 continues to receive its local broadcast station signals from four Designated Market Areas (“DMAs”) over-the-air at headend facilities throughout its service territory and stated that construction of direct and dedicated fiber lines to broadcast stations’ transmission facilities remains cost-prohibitive at more than \$1 million per DMA. Mr. Osborn also explained that approximately 40 percent of VTX1’s 1,800 video subscribers are located more than 75 miles from the nearest broadcast facilities and have no other option but to rely on MVPDs for access to local news, weather and other local broadcast content. Mr. Osborn discussed the programming and other cost barriers that inhibit the ability for small rural MVPDs such as VTX1 to become or remain profitable, highlighting a quadrupling of rates for retransmission consent over the last decade and carriage of additional networks that impede the ability for VTX1 to offer a competitively priced MVPD service. Mr. Osborn also described the inability of VTX1 to obtain rights to provide an over-the-top video solution as a result of limitations placed on local broadcast stations by their network agreements.

Ms. Shepard described the MVPD services that Volcano provides to approximately 2,900 subscribers east of Sacramento, California. Similar to VTX1, Ms. Shepard explained that Volcano continues to obtain access to local broadcast signals from its assigned DMA over-the-air. Ms. Shepard also discussed the inability of Volcano’s customers to receive broadcast signals for free over-the-air and the

¹ Mark Feest participated in meetings with Alison Nemeth and the Media Bureau but did not participate in the meeting with David Grossman.

lack of reliability of direct broadcast satellite (“DBS”) services in the mountainous terrain of the Sierra Nevadas. Ms. Shepard further explained that the cost of programming has increased over the last decade far beyond the amounts that Volcano and other small rural MVPDs are able to recover from the video rates that their video customers are able or willing to pay.

During meetings with Ms. Nemeth and the Media Bureau, Mr. Feest discussed the MVPD operations of CC Communications that began with the utilization of copper facilities approximately 60 miles east of Reno, Nevada which now serves approximately 1,600 video subscribers. Mr. Feest described the lack of availability of free over-the-air broadcast signals in CC’s service territory, the reliance of CC’s customers on MVPDs to access local broadcast content, and the substantial cost associated with deploying direct fiber connections to broadcast transmit facilities without the possibility of any return on investment for deployment.

WTA, Mr. Osborn, Ms. Shepard, and Mr. Feest described the experiences of small MVPDs in obtaining retransmission consent from local broadcast stations. WTA explained that for its members negotiations are often not negotiations at all but rather are largely take-it-or-leave-it propositions in which small MVPDs, who generally represent less than one percent of most local broadcast station markets, have little or no bargaining power because the loss of such a small percentage of consumers in a DMA has no impact upon network affiliate audiences or the rates they charge to advertisers. WTA noted that in addition to exponentially increasing rates for retransmission consent, its members are increasingly experiencing demands for carriage of additional affiliated multicast, broadcast and non-broadcast networks, including demands to carry unnamed, new or yet-to-be-acquired broadcast or cable networks. Additionally, small MVPDs have been largely unsuccessful in obtaining assistance from local broadcast stations in extending broadcast signals post-DTV transition to ensure continued signal reception at headends or availability of broadcast signals by other means. Rather retransmission consent agreements place the onus squarely on the MVPD to obtain broadcast signals. WTA also discussed common retransmission consent provisions that restrict MVPDs from marketing service offerings that contain only local broadcast networks and that prohibit MVPDs from informing their customers, advocates and the Commission about the true costs of the retransmission consent. Due to skyrocketing content costs and onerous carriage conditions, small MVPDs are increasingly exiting the MVPD marketplace or seriously considering exit strategies, potentially leaving some rural consumers with no access to local broadcast content and other cable programming altogether.

Regarding the Next Generation TV standard, WTA explained that because the new standard is not backward compatible with existing equipment small MVPD networks will likely require wholesale re-engineering that is financially infeasible or impossible given their already precarious finances due to the aforementioned content pricing and carriage demands. For MVPDs that carry Next Generation signals – either because they voluntarily agree to such carriage or because carriage is demanded by local broadcast stations as a condition of retransmission consent – the necessary investments will be significant. WTA explained that the likely costs will include engineering studies, new receivers, new transcoders, demultiplexers, demodulators, new set top boxes, redundancies, and system integration and testing. Additional investigation and investments will likely be required to enable interactive exchanges between customers and broadcast stations to enable advanced emergency alerts and other on-demand content touted as proposed benefits of the Next Generation TV standard. Costs are nearly impossible to estimate with accuracy because Next Generation TV-compatible equipment is not yet commercially available; however, it is very likely that such costs will be significant.² For example, Mr. Feest

² Mr. Osborn estimates that if all local broadcast stations carried by VTX1 were to transition to the Next Generation TV standard the costs may exceed \$400,000 which will ultimately be passed along to VTX1’s rural customers or taken as a loss to the company.

estimated that his company would need to replace an average of 3.1 set top boxes per customer at a cost of between \$160-240 per box.³

WTA further explained that the substantial bandwidth necessary to carry Next Generation TV signals that will be a significant challenge for some of the most rural MVPDs that operate older digital and analog cable systems. Particularly because consumers will need to purchase new TV sets prior to receiving the benefits of Next Generation TV, MVPDs will likely need to carry both legacy and Next Generation signals to ensure that all customers can view local broadcast content. WTA described that independent and niche programming, including programming that may be of substantial interest to rural consumers, will be the first programming dropped from small MVPD systems because of insufficient channel capacity as a result of increased bandwidth consumption by broadcast stations. Furthermore, WTA explained that the additional bandwidth needs for Next Generation TV signals will decrease the bandwidth available for broadband services in rural communities. Among other things, the increased bandwidth needed to support Next Generation TV signals will exacerbate the existing shortage of broadband capacity and services in many rural areas, and preclude residents of such areas from exploring and using over-the-top alternatives to MVPD services.

WTA explained that, even if an MVPD does not carry Next Generation signals but a local broadcast station in its DMA begins to locally simulcast legacy ATSC 1.0 signals, investments will be required to continue carriage of legacy signals from new transmitting locations. WTA explained that possible costs will include the need to conduct an engineering study to determine exactly what investments are required under the circumstances, the adjustment or replacement of existing receivers and antennae, the installation of demultiplexers, the establishment of redundancy, and the completion of system integration and testing.

WTA noted that a significant number of retransmission consent agreements are set to expire by the end of 2017 and some negotiations have already begun. It appears that demands for carriage of Next Generation TV signals as a condition of retransmission consent for legacy signals are already occurring, and that some existing or proposed agreements may be read to require carriage of Next Generation TV signals despite the fact that the new standard is not yet finalized. WTA noted that its members have encountered language in proposed retransmission consent agreements that require carriage of any “compliant ATSC standard.” As a result of their lack of negotiating power, WTA expects that small MVPDs will have a substantial challenge avoiding inclusion of broad language that may require Next Generation TV carriage.

WTA urged the Commission to protect small MVPDs from being forced to undertake the significant investments that would be required to continue retransmitting local broadcast signals to rural consumers who cannot otherwise access them for free over-the-air. Consistent with its comments and other commenters in the record,⁴ WTA urged the Commission to require that carriage of Next Generation TV signals be negotiated separately and apart from carriage of legacy signals during any voluntary transition period, at least as pertaining to small MVPDs, and deem it a “per se” violation of the good faith negotiation requirement for broadcasters to tie these carriage agreements together. Section 325 provides broad authority to the Commission to ensure that retransmission consent does not result in unreasonable cable rates, and the Commission has broad authority to ensure that broadcast licensees act in accordance

³ The cost of a Next Generation TV-compatible set top box may likely be higher, particularly for small MVPDs who are the last to obtain access to new equipment.

⁴ See Comments of WTA-Advocates for Rural Broadband at 11-12 (filed May 9, 2017); *see also* Comments of DISH Network, LLC at 2 (filed May 9, 2017); Comments of Verizon at 11 (filed May 9, 2017); Comments of AT&T at 21 (filed May 9, 2017).

with the public interest.⁵ Furthermore, failure to ensure that the Next Generation TV transition is entirely voluntary for *all* stakeholders through targeted rules will hinder significantly or entirely foreclose competition between DBS and cable/IPTV MVPDs.⁶

WTA also urged that providing sufficient notice to MVPDs, by both must-carry and retransmission consent broadcast stations, is critical to any transition. WTA urged the Commission to adopt at least a 90-day notification requirement and stated that a longer period will likely be required because Next Generation equipment is not yet commercially available and because small MVPDs are unlikely to be able to obtain such equipment at reasonable costs until much larger orders of Tier 1 and Tier 2 MVPDs have been satisfied.

Pursuant to Section 1.1206(b) of the Commission's Rules, this submission is being filed for inclusion in the public record of the referenced proceeding.

Respectfully submitted,

/s/ Patricia Cave

Patricia Cave
Director, Government Affairs

Attachments

cc (via email): David Grossman
Alison Nemeth
Martha Heller
Steven Broeckaert
Brendan Murray
Evan Baranoff
Kathy Berthot
F. Mario Trujillo
Gabrielle Rejouis
Mason Shefa
Nicole Desbois

⁵ See, e.g., *FCC v. WNCN Listeners Guild et al.*, 450 U.S. 582, 596 (1981) (emphasizing that “the Commission’s judgment regarding how the public interest is best served is entitled to substantial judicial deference”).

⁶ See *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, First Report and Order*, 15 FCC Rcd 5445, ¶ 58 (2000) (providing that proposals involving carriage terms that result from an exercise of market power by a broadcast station, the effect of which is to hinder significantly or foreclose MVPD competition presumptively are not consistent with competitive marketplace considerations and the good faith negotiating requirement). MVPDs have no alternatives to their DMAs’ local broadcast stations in the marketplace and local broadcast stations are a necessary component for the viability of an MVPD service offering, particularly in rural areas where consumers altogether lack access to free over-the-air broadcast signals.